

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	15-CR-637(KAM)
	:	
	:	U.S. Courthouse
	:	Brooklyn, New York
-against-	:	
	:	TRANSCRIPT OF
	:	STATUS CONFERENCE
	:	
MARTIN SHKRELI and	:	December 14, 2016
EVAN GREEBEL,	:	11:00 a.m.

Defendants.

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BEFORE:

HONORABLE KIYO A. MATSUMOTO, U.S.D.J.

APPEARANCES:

For the Government:	ROBERT L. CAPERS, ESQ.
	United States Attorney
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	Brooklyn, New York 11201
BY:	JACQUELYN KASULIS, ESQ.
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	Assistant U.S. Attorneys

For the Defendant
Shrekli:

MARC AGNIFILO, ESQ.
ANDREA ZELLAN, ESQ.

Greebel:

LISA RUBIN, ESQ.
REED BRODSKY, ESQ.

Also Present:

MICHAEL VERDE, ESQ.
ELIZABETH LANGDALE, ESQ.

IAN SHAPIRO, ESQ.
ZACH SHEMTOB, ESQ.

GLEN MCGORTY, ESQ.
ARLEN PYENSON, ESQ.

Court Reporter: Holly Driscoll, CSR
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Proceedings recorded by mechanical stenography, transcript
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1 THE COURT: Good morning, everybody. Have a seat.

2 THE CLERK: This is criminal status conference,
3 15-CR-637, USA versus Martin Shkreli and Evan Greebel.

4 Will the government's attorneys please state their
5 appearances.

6 MS. KASULIS: Jacquelyn Kasulis, Alixandra Smith and
7 Girish Srinivasan for the government. Good morning, Your
8 Honor.

9 THE COURT: Good morning.

10 THE CLERK: On behalf of Mr. Shkreli.

11 MR. AGNIFILO: Good morning, Your Honor, Marc
12 Agnifilo and Andrea Zellman on behalf of Mr. Shkreli.
13 Mr. Brafman sends his regrets, he had a hearing in front of
14 Judge Berman in the Southern District this morning.

15 THE COURT: All right, no problem, thank you.

16 MR. AGNIFILO: Thank you, Judge.

17 THE CLERK: Counsel on behalf of Mr. Greebel.

18 MS. RUBIN: Your Honor, Lisa Rubin on behalf of
19 Mr. Greebel. My colleague Mr. Brodsky is here. Mr. Chan as
20 well sends his regrets.

21 THE COURT: All right. Good morning.

22 THE CLERK: Parties from the Katten firm.

23 MR. VERDE: Michael Verde and Elizabeth Langdale
24 from Katten Muchin.

25 THE COURT: Good morning.

1 THE CLERK: Who else do we have?

2 MR. SHAPIRO: Ian Shapiro and Zach Shemtob on behalf
3 of Retrophin.

4 THE COURT: Thank you.

5 And then we have someone here for Mr. Biestek?

6 MR. McGORTY: Yes, Your Honor, Glen McGorty and
7 Arlen Pyenson on behalf of Marek Biestek.

8 THE COURT: Would you like to set up at the table?

9 MR. McGORTY: Thank you, Your Honor.

10 THE COURT: All right. I appreciate Mr. Biestek
11 being here through counsel. It would have been more efficient
12 had he appeared the first time. I did receive your letter and
13 it's not a problem --

14 MR. McGORTY: I won't apologize again but I would
15 like to.

16 THE COURT: I understand that you misunderstood the
17 importance of being here, but what we did was, we spent an
18 inordinate amount of time trying to resolve and find a way
19 forward. Then when you send in late letters and try to unwind
20 everything it is very frustrating for everybody.

21 MR. McGORTY: Understood, Your Honor.

22 THE COURT: So, just a couple of housekeeping
23 matters. First, I'm going to issue a decision in the next day
24 or two respectfully denying Mr. Greebel's motions for a bill
25 of particulars and for Brady material, and we're finishing

1 the decision at this point but I wanted to just clarify
2 that.

3 Second of all, we've granted Mr. Greebel's request
4 to travel. I didn't really see a reason to forbid him from
5 traveling over the holidays given his family plans, and the
6 conditions of travel will be similar to those that were set
7 forth last year at this time.

8 Now, I'd like to just confirm with regard to Katten
9 Muchin whether they have produced the billing detail and
10 whether, based on that, they've also provided the documents
11 that were not in dispute.

12 MR. VERDE: Yes, Your Honor, we produced about
13 approximately 110,000 pages of e-mails when Mr. Shkreli was
14 indicated somewhere in the address field, to, from, cc, etc.
15 We were not able to produce anything that was purely MSMB. We
16 did speak with Retrophin's counsel to try and determine
17 whether there was anything -- any way we could define what
18 that meant that would produce purely MSMB documents that we
19 could then do by mechanical searches and we could not, even
20 suggesting that possibly producing everything from that time
21 period that didn't have the word Retrophin in it but
22 Retrophin's counsel pointed out that it could have implicated
23 Retrophin's interest without actually naming Retrophin. So,
24 on that we're still at something of a standstill waiting for
25 further instructions on how to narrow that down.

1 THE COURT: I'm sure you've read Mr. Biestek's
2 counsel's letter in which he clarifies that he represents only
3 Mr. Biestek and not MSMB and that the last known counsel is
4 your firm. You are probably second to Mr. Shkreli in the best
5 position to determine whether those communications that may
6 overlap were done for both MSMB and Retrophin or purely for
7 MSMB.

8 Now, the issue of Mr. Biestek's ability to assert
9 the privilege and waive it only as to Mr. Shkreli has been an
10 issue that has arisen since our last conference and it appears
11 that multiple parties wish to be heard further on that matter.
12 I don't know whether there have been any further discussions.
13 It appears that MSMB and its affiliates are now defunct and
14 that Mr. Biestek has asserted the privilege, as I understand,
15 on his own behalf and perhaps on behalf of MSMB.

16 Is that correct, counsel?

17 MR. MCGORTY: Your Honor, just two points on
18 that; one, we have asserted that there's a privilege that
19 Mr. Biestek currently retains over MSMB Capital documents
20 certainly with respect to the corporation and, secondarily,
21 potentially as an individual. Again, one thing I think Your
22 Honor probably knows by now is we do not have any access to
23 these documents nor have we seen them so I do not know whether
24 or not there are any documents specifically at this time for
25 which there's an individual assertion but at a minimum as a

1 corporate officer we are asserting privilege and would like
2 the ability to review the documents to see whether we would
3 consider waiving.

4 THE COURT: Well, who has an objection to letting
5 counsel for Mr. Biestek see the documents that are only
6 related to MSMB or at least there's some indication that they
7 do? It doesn't seem like anybody does object. And had you
8 been here at the last conference I would have --

9 MR. MCGORTY: Your Honor, I would also add we are
10 not waiving the privilege as to Mr. Shkreli. We don't believe
11 we have any superior right to Mr. Shkreli over these
12 documents, so we believe that he has a right to the MSMB
13 documents alongside of Mr. Biestek. So, we're not waiving the
14 privilege so he can see them, we are retaining the privilege
15 for all third-parties. We do not consider Mr. Shkreli a
16 third-party.

17 THE COURT: Right, but if you are going to assert a
18 privilege you need to see the documents.

19 MR. MCGORTY: Correct, absolutely.

20 THE COURT: So, you need to go look at those
21 documents and do so expeditiously because we're trying to keep
22 this case on track for trial.

23 MR. MCGORTY: Of course, and we've already had
24 conversations with Mr. Verde and with counsel for Retrophin as
25 well and Mr. Shkreli to coordinate our review if Your Honor

1 would permit us to see the documents.

2 THE COURT: I hope you're going to start that
3 imminently, are you?

4 MR. McGORTY: Your Honor, our understanding is that
5 there is a review to identify the pure MSMB documents, that
6 that review is scheduled to be done on January 5th. If I'm
7 mistaken about that, I apologize. My understanding is we
8 would then take those documents identified by the other
9 parties as pure MSMB documents and we would review that subset
10 of documents for any potential privilege documents and comply
11 with the Court's order and create a privilege log by I believe
12 January 20th was the date. That was our intention. It would
13 only -- that would be the latest we would review the
14 documents. If we could look at them sooner, we will but we
15 would comply with that schedule assuming that is correct.

16 THE COURT: All right. Do we have a sense,
17 Mr. Verde, of how many documents are at stake in that category
18 of MSMB only, just roughly?

19 MR. VERDE: It depends on the time period. There's
20 about a six month time period before we did any billing for
21 Retrophin. There's about an eight, nine month time period
22 overall we were billing MSMB. The problem we have, Your
23 Honor, is that the two companies coexisted at the time. There
24 was a plan as early as, we understand it, 2011 to eventually
25 make Retrophin the main investment vehicle and so what we're

1 struggling with is, when we spoke to counsel for Retrophin,
2 how do we determine whether an e-mail that ostensibly seems to
3 be about MSMB implicates Retrophin's interest and we're
4 trying, so we're not in a position to make any judgment calls
5 about that, we're trying to get some kind of agreed upon
6 definition or mechanical search done so we can apply it, this
7 may be a good venue to do that to get everyone to agree what
8 would be considered purely MSMB documents and then we'll do
9 the search as quickly as we can.

10 MR. SHAPIRO: Your Honor, I had understood that at
11 this point Katten had produced all of the documents to
12 Mr. Shkreli, the Retrophin documents and MSMB documents.

13 THE COURT: That's accurate.

14 MR. SHAPIRO: We're comfortable with Mr. Agnifilo
15 and his team segregating the Retrophin documents from the
16 purely MSMB documents and at that point Mr. Agnifilo can share
17 the purely MSMB documents with Mr. McGorty and so this
18 question as to whether or not we could use a search term to
19 segregate what's in Katten's files I think is moot at this
20 point.

21 MR. VERDE: Well, what we've given -- these are Venn
22 diagrams, so we've given everything that we have regardless of
23 time period where Mr. Shkreli was copied in some way. There
24 is a universe of documents from the first eight, nine months
25 of the relationship which could arguably be just for MSMB on

1 which Mr. Shkreli was not copied. So, those are the documents
2 that we're talking about, that was paragraph two I believe of
3 Your Honor's order about any documents regardless of whether
4 Mr. Shkreli was copied on them or not that were purely MSMB
5 documents.

6 So, to be clear, the definition we're looking for is
7 documents from a period of roughly July 2011 to April 2012
8 that Mr. Shkreli was not copied on, those have already been
9 produced, that are purely MSMB and how do we define what that
10 means.

11 THE COURT: You were counsel for MSMB, Mr. Shkreli's
12 counsel is here, and I think we should try to figure that out
13 because I just have a hard time accepting that the attorneys
14 can't decide on search terms or find a way forward. It seems
15 to me that with regard to MSMB, Katten was dealing either with
16 Mr. Biestek or Mr. Shkreli, and Mr. Biestek has taken the
17 position that he was subordinate to Mr. Shkreli in matters
18 relating to MSMB. So, it does seem to me that whether or not
19 he was copied on it, if Mr. Biestek was the only other person
20 with whom Katten communicated regarding its representation of
21 MSMB and its affiliates, that those documents should also be
22 turned over to Mr. Shkreli, should they not? Does anyone
23 disagree?

24 MR. VERDE: I believe this is based upon Retrophin's
25 objection that some of those documents would have referred to

1 Retrophin, implicated Retrophin's interest, that's where we
2 ran into the --

3 MR. SHAPIRO: Your Honor, if the communication is
4 with Mr. Shkreli, they have already been turned over to
5 Mr. Agnifilo without our objection.

6 THE COURT: But if they are communications with
7 Mr. Biestek rather than Mr. Shkreli, they still pertain to
8 MSMB and they should still be turned over, and you can turn
9 those over, I would think, jointly to Mr. Biestek's attorney
10 and Mr. Shkreli to review.

11 MR. SHAPIRO: For the nine month period?

12 THE COURT: For the documents that are only
13 pertaining to MSMB which I think Mr. Verde had identified.

14 MR. VERDE: That's the question, Your Honor, if I
15 may, it is just how do we identify those documents that are
16 the MSMB and don't implicate any Retrophin interest because
17 that is the objection that we got.

18 THE COURT: That's why Mr. Shkreli is going to look
19 at those and to the extent he determines it is purely MSMB,
20 they go to Mr. Biestek's counsel to review. Mr. Shkreli and
21 his counsel will be able to recall, in communication with
22 lawyers who are still at your firm who may have been involved
23 in some of those communications, and clarify and recollect by
24 reviewing billing record detail, whether or not that
25 representation pertained to both or either of those entities.

1 MR. VERDE: So, I think it would be helpful if we
2 were ordered to produce all of the documents for that time
3 period.

4 THE COURT: I am respectfully ordering you. Thank
5 you, Mr. Verde.

6 MR. VERDE: Thank you, Your Honor.

7 THE COURT: Mr. Shkreli and his lawyer will look at
8 those documents. Again, you're segregating those documents by
9 client, including Mr. Shkreli as client to the extent he
10 claims to be the client. Once that determination is made and
11 counsel for Retrophin and counsel for Mr. Biestek are able to
12 review those documents and determine whether there are
13 privileges, they'll make a privilege log.

14 Yes, Mr. Shapiro.

15 MR. SHAPIRO: Your Honor, I just want to make sure I
16 understand. At this point all the communications with
17 Mr. Shkreli have been turned over and no one has been pressing
18 Katten for the internal Katten communications or other
19 documents that weren't communications with Mr. Shkreli and so
20 I don't know whether we're now adding to the hundred thousand
21 pages or so of communications with Mr. Shkreli we're now
22 adding internal Katten communications and documents that
23 weren't communications at all and at that point we would have
24 a concern about providing everything in Katten's files to
25 Mr. Shkreli's counsel because the premise of the original

1 analysis on the attorney-client privilege was that Mr. Shkreli
2 had already been a party to many of those communications.

3 THE COURT: I don't think Mr. Verde was talking
4 about internal Katten communications, nor was I. When I
5 directed that additional documents be turned over to
6 Mr. Shkreli and his lawyer, I was not referring to those
7 internal communications, that's another category, and I would
8 assume that for those documents, the internal Katten
9 communications, that Katten will assert the work product
10 doctrine over those documents.

11 MR. VERDE: No, Your Honor, we're happy -- they
12 belong to our clients, it is just a matter of which client
13 gets the first crack at them.

14 THE COURT: Well, don't you know what your
15 communications related to when you discussed your clients?

16 I'm just having a hard time understanding how your
17 firm could be so in the dark about what you did, and for whom.

18 MR. VERDE: The problem, Your Honor, is that there's
19 a period of time where we're representing MSMB.

20 THE COURT: Yes.

21 MR. VERDE: Retrophin exists at that time.

22 THE COURT: Yes.

23 MR. VERDE: And so, ostensibly everything from that
24 period is MSMB work. We are prepared -- we're happy to
25 produce them, we have them segregated.

1 THE COURT: These are your internal communications
2 regarding MSMB?

3 MR. VERDE: Everything.

4 THE COURT: All right. No issue there.

5 MR. VERDE: By the way, Your Honor, this is in
6 response to paragraph two of your order which ordered us to
7 produce everything purely MSMB without regard to whether
8 Mr. Shkreli was communicated on it or not. So, that would
9 include our internal communications, it would include
10 everything we did during that time period. The problem we
11 have is that when we went to produce that, Retrophin said
12 because Retrophin's predecessor, Retrophin LLC, existed at the
13 time and it was the same people, the same two people operating
14 both companies and there was a plan to move the primary
15 investment business to Retrophin, it wasn't -- there were
16 going to be communications that also could potentially be
17 claimed by Retrophin as they have privacy over that.

18 So, it is not a matter of us not being able to say
19 what we did, from our point of view that was all MSMB
20 documents. It was in conversations with Retrophin's counsel
21 who said if Retrophin's interests are implicated, we assert
22 privilege, we're instructing you not to produce them. The
23 problem we have is, well, how do we determine that because
24 that's a judgment call as to whether a communication somehow
25 implicated Retrophin's interest. So, we're actually prepared,

1 everything is ready to go, search terms, we're just looking to
2 get some sort of clear instructions so we are not making
3 judgment calls as to whether a communication might have
4 implicated Retrophin's interest.

5 THE COURT: All right. What I'm focusing on, you
6 use the term "communication," which I think is a term of art
7 when discussing attorney-client privilege. The communication
8 is between the attorney and the client. What Mr. Shapiro is
9 talking about is internal Katten communications between the
10 attorneys for either or both of these entities and its
11 inability to discern whether those communications had
12 overlapping subject matter.

13 MR. VERDE: Right, and that is part of what we
14 understood -- we understood that those internal communications
15 were part of paragraph two of your order so we pulled those
16 all together but we have the same problem, it's a matter of
17 opinion as to whether a communication we're having that
18 appears to be purely MSMB somehow implicates Retrophin's
19 interest. That's why we had suggested we'll produce
20 everything except those documents, communications, whatever we
21 have that actually has the word Retrophin in it.

22 MR. SHAPIRO: Your Honor, if I may, just two
23 quick points; one is all of this results from a subpoena by
24 Mr. Shkreli directed at Katten and I had the impression that
25 Mr. Shkreli's counsel was for the moment content with

1 receiving the communications between Mr. Shkreli and Katten
2 such that we don't have to dig deeper at this point to concern
3 ourselves with documents that are not communications with
4 Katten and then if we are going to concern ourselves with that
5 additional universe of documents with respect to the nine
6 month period when Katten was only representing -- or it's not
7 true that they were only representing MSMB, they were only
8 billing MSMB; we have said to Mr. Verde that for most of that
9 period, for the period through December 2011 before January
10 2012, he can apply the search term Retrophin, segregate out
11 those documents and provide the rest of the 2011 documents to
12 Mr. Shkreli if we even have to reach this category of
13 documents.

14 THE COURT: So, to the extent you don't feel
15 comfortable that you have a sufficient order to do that and
16 you're asking for an order, I'm granting that request.

17 MR. VERDE: We will do a search for everything, just
18 to be clear, so it is the period from April 2011 to
19 December 2012?

20 MR. SHAPIRO: No, through December 2011 before
21 January 2012; if you segregate out anything that has the
22 search term Retrophin you can provide the rest to the MSMB
23 parties and the only other period Mr. Verde is talking about
24 is the period from January to April 2012 when Katten was
25 providing significant services to Retrophin and there if there

1 really is a need to try to mechanically segregate out the
2 Retrophin documents by search terms, I would need to get back
3 to Mr. Verde about that in the next day or two, but it's also
4 just a four month period, Mr. Verde's firm could look at the
5 documents in that four month period and determine which of
6 those relate to Retrophin and which relate to MSMB, I don't
7 think that's a substantial burden and we would be prepared to
8 rely on their good faith in that exercise.

9 MR. VERDE: It's not a burden issue, Your Honor, it
10 is a second guessing issue when we're asked to make judgment
11 calls.

12 THE COURT: All right. Again, it seems that if you
13 don't have a clear sense of which client is being served in
14 that communication, have Mr. Shkreli's attorney look at it.

15 MR. VERDE: Very good.

16 THE COURT: Is there anything else that is unclear
17 about where we are with regard to the documents?

18 MR. VERDE: I think from our point of view we have
19 very clear instructions, Your Honor.

20 MR. SHAPIRO: Your Honor, for the period April 2011
21 or so to April 2012 is what's -- it's not clear to me what's
22 getting turned over to Mr. Shkreli; it is not the internal
23 Katten emails, the e-mails with Mr. Shkreli have already been
24 turned over, so is it just loose documents relating to MSMB?

25 THE COURT: You're creating all these problems by

1 conjuring up issues. Do you even know such documents exist?

2 MR. SHAPIRO: Yes, I assume so in their files,
3 Mr. Verde has said those files exist.

4 THE COURT: Have you tried to look at anything they
5 have that pertains to only Retrophin?

6 MR. SHAPIRO: I know there are documents in early
7 2012 that relate only to Retrophin because --

8 THE COURT: Have you seen those?

9 MR. SHAPIRO: I've seen the documents in our files,
10 I haven't seen the documents in Katten's files.

11 THE COURT: Well, if Katten is willing to give those
12 to you why haven't you looked at them?

13 MR. SHAPIRO: Katten hasn't been willing to give
14 them to us because Katten expressed a concern.

15 THE COURT: These are documents that pertain only to
16 Retrophin, I don't think there's a dispute.

17 MR. SHAPIRO: Katten isn't willing to identify those
18 documents, they're not willing to review the documents and
19 make judgments about which relate to Retrophin and which
20 relate to MSMB even though we're prepared to delegate that
21 discretion to them for the four month period from January to
22 April 2012 and if they have questions about specific
23 documents, they can ask us.

24 THE COURT: To the extent that Mr. Shkreli is
25 looking at those documents, we had set up a protocol I thought

1 that they would review the documents they get from Katten,
2 they will give documents relating to Retrophin to you to
3 review and to decide whether to assert a privilege and the
4 same is true for the Biestek MSMB documents.

5 Are you reviewing documents, counsel?

6 MR. AGNIFILO: Yes, Your Honor, we are.

7 THE COURT: Are there documents that fit into the
8 category that Mr. Shapiro described that you're having issues
9 with?

10 MR. AGNIFILO: Not that I've seen but we're still
11 doing word searches and we can look specifically. One of the
12 things that I hope doesn't get lost, I think this morning it's
13 gotten lost a little bit, we're actually communicating I think
14 fairly well all of us and that's important from my perspective
15 because I think the more that we -- we've imposed on the Court
16 a great deal on something that's very, very detailed and
17 specific, quite frankly, that experienced lawyers should be
18 able to do and I think we're actually being fairly productive.

19 Retrophin has voiced some specific concerns to us
20 and I think they're right about those concerns and when we
21 agree, we try to agree. So, we're talking about issues of
22 waiver, scope of different waivers and we're in daily
23 communication about that. Mr. Verde and his firm I think
24 couldn't be more agreeable and so, what I'm hoping, and we
25 haven't really succeeded quite in this, is to try to, to the

1 extent we can unburden the Court of this, we're trying to do
2 that. At the end of the day, we're not at the end of the day
3 yet, we might have disagreements on certain areas but we're
4 trying to limit that and be sensitive to everybody's concerns.
5 I mean from Katten's perspective, Katten doesn't want be to in
6 a position of saying this is a Retrophin document, this is an
7 MSMB document. I think part of the problem, and I know
8 Mr. Verde and his team has been diligent in trying to resolve
9 the problem, is it's an organic development of how MSMB kind
10 of grew into Retrophin so you get issues along the way that I
11 think are hard, maybe even impossible for them to resolve.

12 So, going forward, and we've been speaking with each
13 of our colleagues almost on a daily basis so there's probably
14 no problem we can't overcome. We may at some point, but we're
15 not there yet, agree to disagree on certain areas and then
16 we'll bring that limited area to Your Honor in January
17 sometime for a resolution. And so, to Your Honor's question,
18 what we can do, we can do word searches based on anything that
19 Mr. Shapiro suggests and we can look specifically for that.

20 THE COURT: Well, no, I appreciate that but in some
21 of the correspondence I got notifications that the attorneys,
22 I think it was Retrophin's attorneys and Katten couldn't agree
23 on word searches. That seemed absurd to me, quite frankly,
24 but so what we are doing now is trying to find the best way
25 forward. I don't know, with all due respect to Mr. Shapiro,

1 to raise the what if-s and what if there's this or that, I
2 don't know that that's a helpful exercise. It seems to me
3 that Katten knows what it has, it has probably told you in
4 more detail than it's ever told me or anyone else what they
5 might have that might implicate Retrophin's interests. To the
6 extent they are unsure or have concerns, it seemed to me that
7 Mr. Shkreli was the one person in the room who had seen these
8 communications who had invoked the services of Katten to
9 assist either himself, Retrophin or MSMB and that he would be
10 in the best position to make that call. So, there is the
11 protocol, absent an agreement about word searches or any other
12 way, to move forward and that's why ultimately we came to this
13 solution.

14 MR. SHAPIRO: Your Honor, if there are additional
15 documents that Mr. Agnifilo needs from Katten, I commit to
16 working out what if anything needs to be done by the end of
17 the week, I'm comfortable that we will be able to sort that
18 out.

19 THE COURT: All right. I appreciate that and I
20 don't mean to be impatient or sound impatient with you but it
21 seems to me that we get something resolved and then three or
22 four of you write repeated letters back and forth saying, but
23 wait, what about this, what about that, and sometimes it's a
24 concern based on actuality and sometimes it is a hypothetical
25 concern but we're trying to move this case forward and to get

1 the parties the documents they need to proceed to motion
2 practice or trial. So, I am trying to address all of your
3 concerns.

4 Now, have the parties agreed to the scope of the
5 waiver? I think that Retrophin had been concerned that its
6 agreement to waive in a limited way production of documents
7 would not be used against it. This was reflected in
8 Retrophin's December 6 letter. Have there been any further
9 disputes or concerns, Mr. Shapiro or Mr. Agnifilo?

10 MR. AGNIFILO: Yes, we've been -- Retrophin came
11 forward to us and said they're willing to expand the waiver in
12 certain discrete areas. We looked at some of the things that
13 we wanted to try to see exists in the documents, we went back
14 to them and said we want you to consider expanding the waiver
15 in these additional, I think it was six discrete areas and
16 Mr. Shapiro I think in good faith saying that he thinks he can
17 accommodate us, he's not entirely sure, he has to go back and
18 check with his client and all that, but we're working
19 productively through those issues and I think we'll be able to
20 do that.

21 THE COURT: All right. Good.

22 Now, I think the government had raised some issues.
23 Did you want to be heard?

24 MS. KASULIS: Your Honor, I think, yes, please, just
25 very briefly. Your Honor, I think with respect to the first

1 concern with Mr. Biestek's privilege assertions, I think we
2 just need to see whether there in fact are any issues, whether
3 he's had an opportunity to review documents and we determine
4 whether or not he is going to in fact assert a privilege. So,
5 the government's position at this time is it may be a little
6 early to argue that. We did want to put the Court on notice
7 that the government does have concerns about these privilege
8 assertions or potential privilege assertions.

9 We did request a clarification in the Court's orders
10 regarding the production of privilege logs by all the parties
11 so that we all have a sense of what's being held back and the
12 reasons for the withholding of documents that we can then, if
13 we do have any differences of opinion as to various
14 assertions, we can bring maybe just that very specific set of
15 documents to the Court's attention.

16 THE COURT: Right. It's going to be difficult for
17 me to resolve disputes about privilege until I know what is
18 being asserted by Mr. Biestek, by Retrophin and by Mr. Shkreli
19 who started this whole process by moving for an order
20 compelling production of documents pursuant to his subpoena.
21 There will be issues to straighten out obviously and I know
22 that Mr. Shkreli's position has done a 180-degree flip from
23 the last conference. I have to say, and I'm sorry about your
24 personal circumstances that resulted in you not being here,
25 but I just had some issues over the idea that two very

1 experienced high caliber attorneys like yourself and
2 Mr. Brafman could not have communicated on a very essential
3 issue regarding a privilege, and it did appear to me at that
4 conference that there was a clear waiver just based on what
5 Mr. Brafman said and Mr. Shkreli's assent to allowing others
6 to review the documents. Those are things I guess we'll have
7 to address later once we are further informed as to whether or
8 not there are documents over which you assert a privilege.
9 But I do think that taking steps back and forth and reversing
10 positions makes it very difficult to move forward especially
11 since the whole idea with this exercise is to give your client
12 documents that he may need to assess whether or not to assert
13 an advice of counsel defense and to make motions that may flow
14 from that decision if he makes it.

15 So, I'm not making any firm decisions right now
16 about privileges, about waivers and about whether someone is
17 entitled to assert a particular privilege on behalf of defunct
18 entities but those will be issues once we have further
19 clarification.

20 MR. AGNIFILO: On that point, Judge, and I, from my
21 perspective and I apologize for the confusion that was caused,
22 I mean it all started at the meet and confer when I thought
23 our position was clear and then after the fact I learned that
24 we took a different position in court and that's why I wrote
25 the follow-up letter to Your Honor. The one point I want to

1 make is the only one talking about this being a privilege in
2 regard to Mr. Shkreli so far is the government. We served the
3 subpoena to get what we thought rightfully belonged to us,
4 whether it is our property in some property law sense or
5 otherwise, and just the genesis of the subpoena was when we
6 came to believe that the government didn't have all of the
7 documents because there was a selective waiver and the
8 prosecution wasn't based on all of the documents, we contacted
9 Mr. Verde at Katten and we said we would like Mr. Shkreli's
10 property and Mr. Verde said on behalf of Katten, we have no
11 problem giving it to you but there are going to be privilege
12 issues, not your privilege, other privileges, Retrophin's
13 privilege, MSMB's privilege that we have to navigate before we
14 give you anything, so that's why we gave the subpoena.

15 At this point I don't even see how a Shkreli driven
16 privilege is even teed up as an issues because at this point
17 we're just trying to get the documents that we're saying are
18 our documents and that Katten has said we're willing to give
19 you. So, now we're navigating Retrophin's privilege and all
20 of the issues that flow from that because of the way MSMB and
21 Retrophin sort of interface, so we're bogged down in that.

22 So, at this point, I know the government wrote a
23 letter to Your Honor asking that we do a privilege log, I just
24 think we're jumping the gun. I mean I don't think we're there
25 yet. I think in January when we see what we have, we see what

1 all this means, that there will be decisions made and I think
2 at that point, I see the government's point but I just don't
3 think we're they were yet, we're still trying to get what we
4 feel is our property which is why we did the subpoena. So,
5 all a long winded way of saying I agree with Your Honor that
6 it is not ripe for decision yet and it may be one day but it
7 is certainly not today.

8 THE COURT: I think at the last conference
9 Mr. Brafman indicated that he would serve a subpoena on
10 Retrophin to get additional documents, is that accurate?

11 MR. SHAPIRO: I think he said something like that
12 but we haven't received a subpoena.

13 THE COURT: All right, because you had agreed that
14 if you get the subpoena you would in all likelihood provide,
15 absent some review or perhaps objections or assertions of
16 privilege, that you were planning to provide documents
17 pursuant to a subpoena.

18 MR. SHAPIRO: Yes, there was a subpoena for MSMB
19 documents and we would respond to that subpoena.

20 THE COURT: Right. All right. So, you might want
21 to consult with Mr. Brafman.

22 MR. AGNIFILO: Very good, Judge.

23 THE COURT: Or review the transcript.

24 MR. AGNIFILO: Right.

25 THE COURT: I think there was a plan in place.

1 All right.

2 MS. KASULIS: Your Honor, just one quick point of
3 clarification; I understand Mr. Agnifilo's point about it is
4 too early to determine whether there's going to be any
5 assertions of privilege because documents haven't really even
6 been reviewed yet. If there is going to be an assertion of
7 privilege by Mr. Shkreli, what the government is requesting is
8 that there be a privilege log created.

9 THE COURT: No, that's --

10 MS. KASULIS: If he's not going to assert
11 privileges, obviously there would be no need for such a log.

12 THE COURT: Any party that is asserting a privilege
13 is required to provide a log so that we can inform all other
14 parties about what documents are at issue and if the parties
15 can't resolve it, I can at least resolve it and I have
16 indicated that I'm willing to do an in camera review given the
17 magnitude and volume of the documents. I'm hoping that review
18 will not entail a large volume and that you can continue to
19 try to resolve your differences.

20 Is there anything else that the parties want to
21 bring to my attention before we adjourn?

22 MS. SMITH: Your Honor, we just wanted to kind of
23 clarify the scheduling order going forward because the
24 severance motions have been adjourned indefinitely, the last
25 set of motions I believe were set to be briefed in January,

1 then we have a March 9th deadline. We just wanted to
2 understand is the Judge going to set a severance schedule and
3 then move back the other motions in limine?

4 THE COURT: I think that the whole issue of
5 severance is still undetermined given the status of the
6 document review. It's not happening as quickly as I would
7 like. I thought there were representations that we could get
8 through this very quickly but that doesn't appear to be the
9 case. So, yes, the severance date has come and gone. We can
10 set another control date by which you're going to have to make
11 the motion or not. Given your current review, what would be a
12 reasonable time to have that motion practice? And I don't
13 know whether Mr. Greebel is going to join in those motions or
14 not.

15 MS. RUBIN: Your Honor, our client is evaluating
16 whether or not he will make his own severance motion but, of
17 course, the timing for us would be contingent on our receipt
18 of any documents that remain to be produced and it would be
19 hard for us to evaluate in a vacuum not having those documents
20 how much more time Mr. Greebel would need.

21 THE COURT: I think we have end of January as a
22 target date to get all of this review accomplished, correct?

23 MR. AGNIFILO: Yes, Judge.

24 THE COURT: How soon after that could the parties
25 make a determination regarding the motion practice? And

1 ultimately I don't know whether anyone is going to continue to
2 object or will have any objections to have Mr. Greebel review
3 the documents as well. It doesn't appear that Mr. Shkreli
4 will object.

5 MR. AGNIFILO: No, we don't object, Judge.

6 THE COURT: All right. Are you going to object to
7 having the government see the documents?

8 MR. AGNIFILO: I think at this point I don't know
9 the answer to that. I think at the end of January when we've
10 actually reviewed them I think I'll have a much better idea of
11 our position on that.

12 THE COURT: I mean the government knows that you
13 don't get a per se look at attorney-client documents but if
14 there is a waiver or if there is an advice of counsel defense
15 then --

16 MR. AGNIFILO: Clearly.

17 THE COURT: -- the landscape changes. When they do
18 a search, as you know, they have to wall off any
19 attorney-client documents. So, all right. Well, let's then
20 set a prospective date for motion practice after the
21 completion of document review and the assertion of privilege
22 issues.

23 MR. AGNIFILO: I know, Judge, I think we're
24 supposed to -- Retrophin and I are supposed to get together by
25 January 27th, 2017 to agree on all the privilege and document

1 issues, so maybe 30 days after that should bring us to the end
2 of February.

3 THE COURT: Can we throw Mr. Biestek into the loop
4 too since he is asserting a privilege?

5 MR. AGNIFILO: That's fine, Judge.

6 THE COURT: All of you ought to get together and
7 decide. So, what date do you want?

8 MR. AGNIFILO: Let me see if I can get my calendar
9 up quickly; a date in late February that's convenient to the
10 Court and government and all counsel.

11 THE COURT: Yes, Ms. Rubin.

12 MS. RUBIN: On behalf of Mr. Greebel, we'd ask for
13 some additional time given we won't be able to review any
14 documents until Mr. Shkreli and his counsel are done with
15 their review. Mr. Greebel will need time to digest any
16 additional documents produced in contemplation of any
17 severance motions he may make. I'd ask for the end of
18 March, Your Honor.

19 THE COURT: I think we're all in agreement that the
20 trial date in June is still a hard date, so if you're talking
21 about having all of the briefing completed by the end of
22 March, that's one thing but we're not going to start briefing
23 in March and throw this into April because there will be other
24 motions I believe.

25 MS. RUBIN: Your Honor, we'd be fine with the

1 motions being fully briefed by the end of March so that
2 motions themselves and the briefs will be due in early March.

3 THE COURT: Have the motions fully briefed by the
4 end of March? I might bring that forward actually.

5 What is the proposal?

6 And there are a whole host of other motions I think
7 that the defense was contemplating; is that correct?

8 MR. BRODSKY: Yes, Your Honor.

9 THE COURT: How do you propose to schedule those?

10 MS. RUBIN: Your Honor, if I may suggest that the
11 parties have an opportunity to confer with one another and
12 bring back a proposal to Your Honor? I think something would
13 be served by us having an opportunity to confer.

14 THE COURT: The government is shaking its head so
15 I'm reading that as they'll talk to you but don't expect any
16 accommodations. Look, I would rather that you all did confer
17 and really try in good faith to meet each other's needs. I'm
18 not sure that Mr. Greebel is going to be able to have the
19 amount of time that he hopes to make decisions about his
20 further motion practice but I do think that the parties need
21 to try to work this out with the idea that we maintain our
22 June trial schedule.

23 Yes, Mr. Verde.

24 MR. VERDE: At the risk of volunteering which is
25 always a bad idea, I have a suggestion that may help move

1 things along a little bit. The same theory, the same
2 rationale the Court used by which Mr. Shkreli should be
3 allowed to look at the documents because he by definition has
4 already seen them, we would be willing to do the exact same
5 thing for Mr. Greebel so that any emails, any communications
6 in which he is listed we'll do a search and we can produce
7 those to Mr. Greebel's counsel. We can do that within the
8 next couple of days which should hopefully expedite some of
9 this.

10 THE COURT: I'm sure I'm not hearing any objection
11 from them on this proposal, I'm not hearing any objections
12 from anyone else, so I appreciate that very much, Mr. Verde,
13 thank you. So, in the next few days?

14 MR. VERDE: We should be able to get it out by
15 Monday.

16 THE COURT: All right, perfect. I will be here
17 through the holidays and I'm hoping, I'm not inviting you to
18 bring more disputes to my attention but I do want to keep this
19 on track so I'm working through, I'll be here. Did the
20 government --

21 MS. SMITH: Your Honor, just to be clear for when we
22 meet and confer, does the Court still want to do severance
23 first and then the other motions in limine afterward or do you
24 want one date for all the remaining briefing?

25 THE COURT: I would like to have as much efficiency

1 as possible in the briefing of any remaining motions and
2 motions in limine don't necessarily depend on whether or not
3 the case is severed, right?

4 MS. SMITH: Certainly some of them might --

5 THE COURT: I mean many times even if you sever a
6 trial, evidence is going to be admissible against potential
7 parties in any event so I don't see why we have to necessarily
8 delay all of the motions but I do think that we need to keep
9 this on track for June.

10 MR. BRODSKY: Your Honor, respectfully, we modeled
11 our proposal which initially the government had opposed off of
12 Your Honor's own case management orders and as they reflect in
13 your other cases, motions in limine if that's what the
14 government is talking about, about particular pieces of
15 evidence relating to trial often come at some period before
16 trial. What Your Honor I believe set a schedule for is
17 severance during this period of time which obviously has been
18 delayed and then a January 31st other motions deadline which
19 were other motions the defense was contemplating but not
20 motions in limine and then later on after the government
21 produced their exhibits and their witness list we would assess
22 the evidence and determine whether we had motions in limine so
23 Your Honor could set a schedule accordingly. We are happy to
24 meet and confer with the government and the other parties but
25 what we would suggest is a severance schedule and other motion

1 schedule that Your Honor had contemplated which we could
2 discuss dates on and then to keep the same schedule that Your
3 Honor has already imposed with respect to the exhibits, the
4 witnesses and motions in limine. We don't think that the
5 severance impacts the exhibits, the witnesses and other
6 motions in limine schedule. The severance is a distinct sort
7 of issue and that is what's up in the air that we should meet
8 and confer and propose to Your Honor a date for that.

9 THE COURT: I think that one thing that is clear is
10 that the government hasn't seen some of the documents that are
11 currently being reviewed and I don't know whether any of those
12 documents will be the basis for any disputes between the
13 parties. I would urge you all to talk and try to resolve.
14 I'd like not to alter too much of the schedule if possible and
15 to the extent the severance motion will be made, we'll need to
16 schedule an expedited schedule for that.

17 I want you all to understand this is one of over
18 300 cases so you're not the only game in town, you demand a
19 lot of time but I have other cases to tend to and other
20 trials. But for the luck of settlements, I had six trials
21 between November 14th and January 31st, so you need to just be
22 mindful of my schedule as well and that's why I'm not taking a
23 vacation over the holidays like some of the rest of you. To
24 the extent you can work cooperatively to adjust the schedule
25 to accommodate this lengthy review process which again is

1 taking far longer than I would have hoped and what the parties
2 had previously hoped, I would urge you to do that.

3 So, can you meet and confer and provide an adjusted
4 schedule sometime in the next couple of weeks?

5 MS. KASULIS: Absolutely, Your Honor.

6 MR. AGNIFILO: Yes, Judge.

7 MS. RUBIN: Yes, Your Honor.

8 THE COURT: All right, good. Thank you.

9 Do you want to set another status conference date?
10 We don't know whether you're going to be making a severance
11 motion, I don't really want to set that as a particular
12 argument date for the severance motions but we should have
13 another status date sometime sooner rather than later, so we
14 can address any outstanding disputes, maybe the end of January
15 after you've gotten through the document review, does that
16 make sense?

17 MR. AGNIFILO: That makes sense from our
18 perspective.

19 THE COURT: Ms. Jackson, do you have a date for us?

20 THE CLERK: Yes, Judge.

21 THE COURT: I think we're on trial that week.

22 THE CLERK: Yes, Judge.

23 The 25th at noon.

24 MS. RUBIN: Your Honor, if we could make it in the
25 afternoon that would be preferable for us.

1 THE COURT: Noon, is that close enough to the
2 afternoon?

3 MS. RUBIN: 1:00 would be much better.

4 MR. AGNIFILO: Judge, I am sorry, I have a case in
5 Trenton that day.

6 THE CLERK: The 26th.

7 MR. AGNIFILO: The 26th is fine.

8 THE CLERK: 2:00 p.m., does that work?

9 MS. RUBIN: Yes. Thank you very much.

10 THE COURT: Do you need afternoon every time or just
11 on that date, Ms. Rubin?

12 MS. RUBIN: As a general matter going forward, Your
13 Honor, we will need afternoon. Thank you.

14 THE COURT: All right.

15 MS. RUBIN: Thank you.

16 THE COURT: Yes.

17 MR. VERDE: Do you want Katten at this status
18 conference?

19 THE COURT: Only if there's still going to be an
20 argument or a fight about what is going on with regard to the
21 documents that you have and the same is true for Retrophin and
22 Mr. Biestek. I'm hoping that you'll have resolved your
23 differences by then but we will have privilege logs -- it may
24 be necessary to have your presence.

25 MR. SHAPIRO: Your Honor, if I may burden you with

1 one other point so we don't have to burden you after the
2 conference?

3 THE COURT: All right.

4 MR. SHAPIRO: Your Honor, the current plan, Katten's
5 communications with Mr. Shkreli are being provided to
6 Mr. Shkreli and the Retrophin documents are being returned to
7 Retrophin. The Court has now ordered Katten to produce the
8 communications with Mr. Greebel to Mr. Greebel's counsel which
9 I understand but by the same reasoning the Retrophin documents
10 should be returned to Retrophin and so the work doesn't have
11 to be done twice, we can let Mr. Brodsky know what those
12 documents are after Mr. Shkreli's counsel has reviewed them
13 but we just want to ensure that the Retrophin documents are
14 going to be returned so that we can assert the privilege and
15 log them.

16 THE COURT: You mean those documents over which they
17 want to assert privilege and documents that they're not
18 interested in?

19 MR. SHAPIRO: Documents --

20 THE COURT: You want all your documents back, is
21 that right?

22 MR. SHAPIRO: The Retrophin documents where we
23 haven't waived the privilege, correct.

24 THE COURT: Will Mr. Greebel's counsel agree to
25 that?

1 MS. RUBIN: Your Honor, I think that imposes a
2 logistical burden on us that's a little bit difficult. In the
3 same way that there have been discussions on this side of the
4 table about not being able to distinguish between MSMB
5 documents on the one hand or Retrophin documents on the other,
6 I just want to make sure that I understand the flow of
7 documents that Mr. Shapiro is contemplating because it sounds
8 as if documents would flow from Katten to us and that we would
9 be then responsible for sort of returning some in one place
10 and returning others in another place. I'm not sure that
11 that's what Mr. Verde contemplated and certainly it is not
12 what my client contemplated at least in terms of seeing
13 documents that he is to or from or cc-d.

14 MR. SHAPIRO: I mean these are documents that are
15 covered by Retrophin's privilege. Mr. Shkreli is going to
16 review them. If the documents relate to Retrophin, they're
17 going to be returned to us but the purpose of that is defeated
18 if those documents are otherwise sitting in Mr. Greebel's
19 files and so we're just asking for those Retrophin documents
20 to be returned to us or Mr. Greebel can receive those
21 documents after Mr. Agnifilo has completed his review.

22 THE COURT: No, I don't want to have it staged like
23 that. I would like Mr. Verde to provide those documents by
24 Monday, as he represented he could, and that that review
25 start.

1 MR. SHAPIRO: We could give Mr. Greebel's counsel an
2 electronic list of the documents that have been returned to us
3 so that the documents can be returned to us by Mr. Greebel's
4 counsel as well, otherwise all of our privileged documents are
5 sitting in Mr. Greebel's files which takes us far from the
6 pragmatic solution that we sought to find with Mr. Shkreli's
7 counsel.

8 THE COURT: Does Katten have more than one set of
9 documents that will be provided?

10 Do you have just one set of documents that are being
11 reviewed by Mr. Shkreli or do you have a duplicate that you're
12 going to be providing to Mr. Greebel on Monday?

13 MR. VERDE: We have one universal set of documents,
14 we searched them to find anything to or from Mr. Shkreli,
15 those have already been produced to Mr. Shkreli. What I
16 offered because I thought it was helping was to give
17 Mr. Greebel's counsel an opportunity to start their review, we
18 would do the exact same search, anything to, from, cc-ing
19 Mr. Greebel, and I can represent to the Court that I don't
20 know the exact number, a tremendous percentage of the
21 communications involve Mr. Shkreli and Mr. Greebel, not
22 surprising. So, the idea would be there would be some
23 overlap. The issue about returning the documents to Retrophin
24 on which they are waiving privilege, that doesn't impact us.
25 I think that's an issue between counsel for Mr. Greebel,

1 Mr. Shkreli and Retrophin.

2 MS. RUBIN: Your Honor, respectfully, I think I may
3 have a suggestion that may advance the ball; in the same way
4 Your Honor asks that we not engage in hypotheticals, rather
5 than try to anticipate what those documents are going to look
6 like and who they belong to, we will represent to Your Honor
7 that in good faith we will review them and we will have a
8 conversation with all other interested parties at the end to
9 determine where they should be returned. If we have a
10 conflict, we can come back to Your Honor.

11 THE COURT: You have a deadline, you realize you are
12 on the same time frame as Mr. Shkreli and you have a lot of
13 resources there to help you do your document review. I don't
14 want this delayed at all.

15 MS. RUBIN: Your Honor, we hear you loud and clear.
16 Thank you.

17 THE COURT: All right. So, I think that you should
18 try to adhere to the same protocols that we've set out for
19 Mr. Shkreli and his attorney so that Retrophin can feel
20 confident that its documents are safe and within its control
21 and it has a sense of the documents that may be useful to the
22 defense but also that it wishes to maintain some sort of
23 privilege over. And I would assume, Mr. Shapiro, that to the
24 extent you've made accommodations and broadened your waiver
25 for Mr. Shkreli, you would also make those same accommodations

1 for Mr. Greebel.

2 MR. SHAPIRO: Yes, except we've asked for the
3 parties' agreement that the topics over which we've now
4 voluntarily waived would not be invoked for the defendants to
5 assert a broader subject matter waiver.

6 THE COURT: Yes. At this point I think we're not
7 making any determinations about waivers. I think that
8 Retrophin is trying to cooperate and to provide an opportunity
9 for defense counsel and their clients to review documents over
10 which it asserts a privilege and he's concerned that defense
11 counsel not come later and assert that they've made a waiver.

12 MR. SHAPIRO: Further waiver.

13 THE COURT: A further waiver.

14 MR. SHAPIRO: When we get all the documents back on
15 January 6 we will log the documents over which we're asserting
16 the privilege and implement the waivers that we've made by not
17 logging those documents and producing them back to the
18 defendants and at that time we would be asking the defendants
19 to agree that the additional waivers that we've made since the
20 waiver that we made in the summer of 2015 would not be the
21 basis for arguments about a broader subject matter waiver.

22 MR. AGNIFILO: We agree, we agree to that.

23 THE COURT: Will Mr. Greebel's counsel agree?

24 MR. BRODSKY: If what he's saying is that we're
25 separating the prior waivers that were made already, the

1 potentially selective waiver that has already taken place with
2 Retrophin and we're setting that aside and reserving our
3 rights to come back to the Court and argue that that was a
4 selective waiver using it as a sword and shield and therefore
5 we have access to other documents, setting that aside, if
6 there are other discrete areas they're waiving now, we will
7 not argue based on those waivers that it results in a broad
8 waiver if that's --

9 MR. SHAPIRO: That's correct, that is our position.

10 THE COURT: All right. So --

11 MR. SHAPIRO: That the protection I am now seeking
12 does not apply to our waiver from the summer of 2015 which we
13 understand is fair game.

14 THE COURT: Right, so you're not going to come back
15 post-summer waiver and argue that Retrophin has made
16 additional waivers.

17 MR. BRODSKY: Right, based on the additional waivers
18 they make now starting in December 2016 to us, we will not
19 argue that those additional waivers result in a broad waiver.

20 THE COURT: Are you satisfied?

21 MR. SHAPIRO: Very, that's fine.

22 THE COURT: Good.

23 MR. SHAPIRO: Your Honor, one other point of
24 clarification, when Mr. Verde made his proposal with respect
25 to Mr. Greebel, we understood that it was the subset of

1 communications with Mr. Shkreli that have already been
2 produced to Mr. Shkreli, Mr. Greebel would receive the
3 communications that included Mr. Greebel and we're okay with
4 that. We just want to make sure that we're not now producing
5 to Mr. Greebel a broader set of communications between
6 Mr. Greebel and Retrophin where Mr. Shkreli wasn't even a
7 party to the communication because then we're far beyond
8 what's been produced to Mr. Shkreli so far.

9 THE COURT: Mr. Verde, there were documents where
10 the communication might not have been directly with
11 Mr. Shkreli but he is indicated as having received a copy and
12 those are being provided, correct?

13 MR. VERDE: Yes, that's right, Your Honor, those
14 have already been provided to Mr. Shkreli. We will do as ever
15 directed. We could either apply it to the entire universe of
16 documents, anything that Mr. Greebel was a communicant, or we
17 can just do it as a subset of the documents that were produced
18 to Mr. Shkreli, the ones that were produced to Mr. Shkreli on
19 which Mr. Greebel was also a communicant.

20 THE COURT: Why does Mr. Greebel need more than
21 that, why does Mr. Greebel need to see every document
22 reflecting a communication that he might have had with MSMB or
23 Retrophin if the issue is whether Mr. Shkreli relied on
24 Mr. Greebel's advice regarding a particular matter that is now
25 the subject of the charges?

1 MR. BRODSKY: Your Honor, we did not serve a
2 subpoena on Katten but we may serve a subpoena on Katten if --
3 as a matter of efficiency to save time it does seem to make
4 sense to me that this search be done and we get all the
5 documents for which Mr. Greebel has already seen and in which
6 he was already on. If there's an objection to that, it does
7 seem to treat us a little bit unfairly. Now, we didn't serve
8 the subpoena --

9 THE COURT: Well, you're not raising an advice of
10 counsel defense, that's the big difference.

11 MR. BRODSKY: Your Honor, to address an advice of
12 counsel defense, should Mr. Shkreli make that determination
13 now or at some point in the future, that would have an impact
14 on us certainly if they did assert an advice of counsel
15 defense. We should be able to see other documents that
16 Mr. Shkreli isn't necessarily on to determine what information
17 we had in our possession that might be impacted by
18 Mr. Shkreli. I mean, Your Honor, we are charged in two counts
19 in which it's a charge of conspiracy, so my view is that we
20 should get access to that information. It would be more
21 efficient, we would be able to avoid serving a subpoena on
22 Katten at some point in the future by getting this.

23 THE COURT: If you serve a subpoena, you have to be
24 looking for relevant evidence and if you're just looking for
25 any document that reflects Mr. Greebel's representation of

1 Retrophin or MSMB or Mr. Shkreli even that has nothing
2 whatsoever to do with the charges, then I'm not sure you would
3 be able to get anyone to enforce that subpoena. Suppose
4 Mr. Greebel did some work for Mr. Shkreli in relation to his
5 will or to a dispute he was having with his landlord, that's
6 just not going to be relevant to this case.

7 MR. BRODSKY: Absolutely, Your Honor.

8 THE COURT: So, Mr. Greebel's need for that document
9 is somewhat in question I would think.

10 MR. BRODSKY: We completely agree. If we served a
11 subpoena on Katten, it would be narrow, it would be targeted
12 to particular relevant areas that would be likely to lead to
13 admissible evidence at trial, we 100 percent agree with that,
14 Your Honor.

15 THE COURT: Well, all right. I don't think, given
16 Retrophin's position, that Mr. Greebel should be entitled to
17 more than is necessary to address the charges in the
18 superseding indictment and to address Mr. Shkreli's advice of
19 counsel defense. Now, one thing we talked about, as you may
20 recall at the last conference, was whether some of this could
21 be streamlined through a stipulation between the government
22 and Mr. Shkreli that between certain numbers of dates with
23 regard to Retrophin and MSMB Mr. Shkreli consulted with an
24 attorney on X number of occasions regarding different
25 subjects. I think that broadening or forcing Retrophin to try

1 to waive even more than it wants to with regard to the
2 communications that occurred between Retrophin's
3 representatives and counsel would really put Retrophin in a
4 difficult position.

5 They're trying to cooperate with you, Mr. Brodsky
6 and Ms. Rubin, and to make documents available that may be
7 necessary or relevant to Mr. Greebel's defense but I'm not
8 sure that it is appropriate to expand that to any matter that
9 Mr. Greebel may have consulted on or given legal advice on
10 without regard to the issues that are relevant to this case.

11 MR. BRODSKY: We understand, Your Honor, so we'll
12 accept Your Honor's proposal with respect to the documents.
13 As we go through them and as we go through the discovery which
14 as you know, Your Honor, we've said before is extensive, we
15 may come back to Your Honor with a trial subpoena for the
16 trial date, I know you can issue those, or if we wanted a date
17 prior to trial, we may ask Your Honor for reasons similar to
18 what Mr. Shkreli asked for for certain documents.

19 THE COURT: Whatever documents he's using to make a
20 motion if he makes the motion regarding his advice of counsel
21 defense, you're going to see those.

22 MR. BRODSKY: Understood.

23 THE COURT: Right, so I don't think you're going to
24 be prejudiced at all.

25 MR. BRODSKY: Understood, Your Honor.

1 THE COURT: All right. I'll make sure you're not
2 prejudiced.

3 MR. BRODSKY: Thank you.

4 THE COURT: Is there anything else?

5 (No response.)

6 THE COURT: I want to thank Mr. Verde for his
7 assistance and Mr. Shapiro and Mr. Biestek's counsel for being
8 here today.

9 Yes.

10 MS. KASULIS: Your Honor, I know that motions are
11 pending right now but just out of an abundance of caution, the
12 Court has designated this case as complex, the government does
13 ask for an exclusion of time until the next status on January
14 26.

15 THE COURT: I think we excluded previously up to the
16 date of trial.

17 MS. KASULIS: Okay.

18 THE COURT: Did we not?

19 MR. AGNIFILO: I thought we did.

20 THE CLERK: Yes, Judge.

21 MS. KASULIS: Okay.

22 THE COURT: Unless we bump back that trial date, I
23 think we are in good shape and I've heard all defense counsel
24 agree that we have excluded time up through the date of the
25 currently scheduled trial in June.

1 MR. AGNIFILO: Yes, Judge.

2 MS. RUBIN: Yes, Your Honor.

3 MS. KASULIS: Thank you, Your Honor.

4 THE COURT: Thank you.

5 (Time noted: 12:20 p.m.)

6 (End of proceedings.)

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